



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/146595

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on February 19, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's Prior Authorization (PA) request for orthopedic shoes.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Pamela Hoffman

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On October 17, 2012, a PA request for orthopedic shoes and inserts was submitted on the Petitioner's behalf. The total cost for the requested items was \$175.32.

3. On October 26, 2012 and November 12, 2012, the agency requested additional information from the provider. On November 21, 2012, the PA was resubmitted with additional information.
4. The Petitioner's diagnoses include posterior tibialis tendonitis, metatarsalgia, neuritis and status post tendon transfer and metatarsal osteotomies. The Petitioner is not diabetic. In November, 2011, the Petitioner had surgery for nerve decompression and foot reconstruction.
5. On November 30, 2012, the agency denied the PA request.
6. On January 11, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The DHCAA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat., §§ 49.46(2) and 49.47(6)(a), as implemented by the Wisconsin Administrative Code, chapter DHS 107.

The administrative code provision governing durable medical equipment provides, in relevant part, as follows:

DHS 107.24. Durable Medical Equipment and Supplies . . .

(2) COVERED SERVICES . . .

(c) Categories of durable medical equipment. The following are categories of durable medical equipment covered by MA:...

2. Orthopedic or corrective shoes. These are any shoes attached to a brace for prosthesis; mismatched shoes involving a difference of a full size or more; or shoes that are modified to take into account discrepancy in limb length or a rigid foot deformation. Arch supports are not considered a brace. Examples of orthopedic or corrective shoes are supinator and pronator shoes, surgical shoes for braces, and custom-molded shoes.

(4) OTHER LIMITATIONS . . .

(f) Orthopedic or corrective shoes or foot orthoses shall be provided only for postsurgery conditions, gross foot deformities, or when attached to a brace or a bar. These conditions shall be described in the prior authorization request....

(5) NON-COVERED SERVICES. The following services are not covered services:

(a) Foot orthoses or orthopedic or corrective shoes for the following conditions:

1. Flattened arches, regardless of the underlying pathology;
2. Incomplete dislocation or subluxation metatarsalgia with no associated deformities;
3. Arthritis with no associated deformities; and,
4. Hypoallergenic conditions....

Gross foot deformities are defined to include varus foot deformities, hallux valgus equal to or greater than 35 degrees and hammer toes with dorsal callousing. MA also covers shoes and orthotics to treat diabetes when there is a complication associated with diabetes that requires a shoe to treat such as partial foot amputation, skin ulceration or a pre-ulcerative callous condition.

The agency denied the PA, finding that the information submitted with the PA does not indicate that the Petitioner has any gross foot deformity as defined by Wisconsin Medicaid nor any other condition that qualifies her for orthopedic shoes.

The information submitted with the PA indicates that Petitioner is not diabetic and needs orthopedic shoes for conditions that cause pain to her feet. However, there is no indication of gross foot deformities as defined by MA or a leg length discrepancy. The Petitioner did have surgery in November, 2011 and she testified that the shoes are required to help her recover from the surgery. However, the PA was not submitted until September, 2012, ten months after the surgery. The information submitted with the PA indicates a post-surgical recovery time of approximately one month. Therefore, I must conclude that the shoes are not requested for a post-surgical condition based on the length of time between the surgery and the request for shoes.

CONCLUSIONS OF LAW

The Petitioner does not meet the criteria for coverage of orthopedic shoes.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

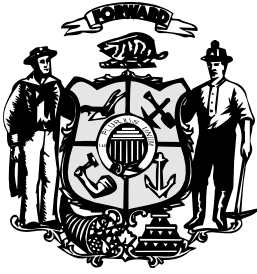
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of March, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 26, 2013.

Division of Health Care Access And Accountability